

AMENDED IN SENATE AUGUST 16, 2016

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN ASSEMBLY MAY 19, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1771

Introduced by Assembly Member O'Donnell

February 3, 2016

An act to amend ~~Sections 653.22 and 653.23 of, and to repeal Section 653.26 of, Section 653.23 of~~ the Penal Code, and to amend Section 602 of the Welfare and Institutions Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1771, as amended, O'Donnell. Prostitution.

(1) Existing law makes a person who directs, supervises, recruits, or otherwise aids another person in the commission of an act of prostitution, or who collects or receives all or part of the proceeds earned from an act of prostitution committed by another person, guilty of a misdemeanor that is punishable by imprisonment in a county jail for no more than 6 months, by a fine not exceeding \$1,000, or by both that imprisonment and fine. Existing law specifies circumstances that may be used to determine if a person has committed the offense, including repeatedly speaking or communicating with another person, or repeatedly or continuously monitoring or watching another person, who is loitering in a public place with the intent to commit prostitution.

This bill would establish additional circumstances that may be used to determine if a person has committed that offense, including, but not

limited to, repeatedly speaking or communicating with, or repeatedly or continuously monitoring or watching, another person who solicits or agrees to engage in any act of prostitution.

The bill would also increase the punishment for a person who directs, supervises, recruits, or otherwise aids another person in the commission of an act of prostitution, or who collects or receives all or part of the proceeds earned from an act of prostitution committed by another person, to a misdemeanor punishable by imprisonment in a county jail for no more than one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine. The bill would make additional conforming changes:

By increasing the term in a county jail from no more than 6 months to no more than one year, this bill would impose a state-mandated local program:

(2) Under existing law, a person who is under 18 years of age when he or she violates the law may be adjudged a ward of the court.

This bill would authorize a court to dismiss the petition against the juvenile upon a finding that he or she committed certain acts of prostitution due to coercion or duress, as defined.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason:

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 653.22 of the Penal Code is amended to~~
2 ~~read:~~
3 653.22. (a) It is unlawful for any person to loiter in any public
4 place with the intent to commit prostitution. This intent is
5 evidenced by acting in a manner and under circumstances which
6 openly demonstrate the purpose of inducing, enticing, or soliciting
7 prostitution, or procuring another to commit prostitution.
8 (b) Among the circumstances that may be considered in
9 determining whether a person loiters with the intent to commit
10 prostitution are that the person:

1 ~~(1) Repeatedly beckons to, stops, engages in conversations with,~~
2 ~~or attempts to stop or engage in conversations with passersby,~~
3 ~~indicative of soliciting for prostitution.~~

4 ~~(2) Repeatedly stops or attempts to stop motor vehicles by~~
5 ~~hailing the drivers, waving arms, or making any other bodily~~
6 ~~gestures, or engages or attempts to engage the drivers or passengers~~
7 ~~of the motor vehicles in conversation, indicative of soliciting for~~
8 ~~prostitution.~~

9 ~~(3) Has been convicted of violating this section, subdivision (a)~~
10 ~~or (b) of Section 647, or any other offense relating to or involving~~
11 ~~prostitution, within five years of the arrest under this section.~~

12 ~~(4) Circles an area in a motor vehicle and repeatedly beckons~~
13 ~~to, contacts, or attempts to contact or stop pedestrians or other~~
14 ~~motorists, indicative of soliciting for prostitution.~~

15 ~~(5) Has engaged, within six months prior to the arrest under this~~
16 ~~section, in any behavior described in this subdivision, with the~~
17 ~~exception of paragraph (3), or in any other behavior indicative of~~
18 ~~prostitution activity.~~

19 ~~(e) The list of circumstances set forth in subdivision (b) is not~~
20 ~~exclusive. The circumstances set forth in subdivision (b) should~~
21 ~~be considered particularly salient if they occur in an area that is~~
22 ~~known for prostitution activity. Any other relevant circumstances~~
23 ~~may be considered in determining whether a person has the~~
24 ~~requisite intent. Moreover, no one circumstance or combination~~
25 ~~of circumstances is in itself determinative of intent. Intent must~~
26 ~~be determined based on an evaluation of the particular~~
27 ~~circumstances of each case.~~

28 ~~(d) A violation of this section is a misdemeanor.~~

29 ~~SEC. 2.~~

30 *SECTION 1.* Section 653.23 of the Penal Code is amended to
31 read:

32 653.23. (a) It is unlawful for any person to do either of the
33 following:

34 (1) Direct, supervise, recruit, or otherwise aid another person
35 in the commission of a violation of subdivision (b) of Section 647
36 or subdivision (a) of Section 653.22.

37 (2) Collect or receive all or part of the proceeds earned from an
38 act or acts of prostitution committed by another person in violation
39 of subdivision (b) of Section 647.

1 (b) Among the circumstances that may be considered in
2 determining whether a person is in violation of subdivision (a) are
3 that the person does the following:

4 (1) Repeatedly speaks or communicates with another person
5 who is acting in violation of subdivision (b) of Section 647 or
6 subdivision (a) of Section 653.22.

7 (2) Repeatedly or continuously monitors or watches another
8 person who is acting in violation of subdivision (b) of Section 647
9 or subdivision (a) of Section 653.22.

10 (3) Repeatedly engages or attempts to engage in conversation
11 with pedestrians or motorists to solicit, arrange, or facilitate an act
12 of prostitution between the pedestrians or motorists and another
13 person who is acting in violation of subdivision (a) of Section
14 653.22.

15 (4) Repeatedly stops or attempts to stop pedestrians or motorists
16 to solicit, arrange, or facilitate an act of prostitution between
17 pedestrians or motorists and another person who is acting in
18 violation of subdivision (a) of Section 653.22.

19 (5) Circles an area in a motor vehicle and repeatedly beckons
20 to, contacts, or attempts to contact or stop pedestrians or other
21 motorists to solicit, arrange, or facilitate an act of prostitution
22 between the pedestrians or motorists and another person who is
23 acting in violation of subdivision (a) of Section 653.22.

24 (6) Receives or appears to receive money from another person
25 who is acting in violation of subdivision (b) of Section 647 or
26 subdivision (a) of Section 653.22.

27 (7) Engages in any of the behavior described in paragraphs (1)
28 to (6), inclusive, in regard to, or on behalf of, two or more persons
29 who are in violation of subdivision (a) of Section 653.22.

30 (8) Has been convicted of violating this section, subdivision (a)
31 or (b) of Section 647, subdivision (a) of Section 653.22, Section
32 236.1, 266h, or 266i, or any other offense relating to or involving
33 prostitution within five years of the arrest under this section.

34 (9) Has engaged, within six months prior to the arrest under
35 subdivision (a), in any behavior described in this subdivision, with
36 the exception of paragraph (8), or in any other behavior indicative
37 of prostitution activity.

38 (c) The list of circumstances set forth in subdivision (b) is not
39 exclusive. The circumstances set forth in subdivision (b) should
40 be considered particularly salient if they occur in an area that is

1 known for prostitution activity. Any other relevant circumstances
2 may be considered. Moreover, no one circumstance or combination
3 of circumstances is in itself determinative. A violation of
4 subdivision (a) shall be determined based on an evaluation of the
5 particular circumstances of each case.

6 (d) This section does not preclude the prosecution of a suspect
7 for a violation of Section 236.1, 266h, or 266i, or for any other
8 offense, or for a violation of this section in conjunction with a
9 violation of Section 236.1, 266h, or 266i, or any other offense.

10 ~~(e) A violation of this section is a misdemeanor punishable by~~
11 ~~imprisonment in a county jail not to exceed one year, by a fine not~~
12 ~~to exceed one thousand dollars (\$1,000), or by both that~~
13 ~~imprisonment and fine.~~

14 ~~SEC. 3. Section 653.26 of the Penal Code is repealed.~~

15 ~~SEC. 4.~~

16 *SEC. 2.* Section 602 of the Welfare and Institutions Code is
17 amended to read:

18 602. (a) Except as provided in subdivision (b), a person who
19 is under 18 years of age when he or she violates any law of this
20 state or of the United States or any ordinance of any city or county
21 of this state defining crime other than an ordinance establishing a
22 curfew based solely on age, is within the jurisdiction of the juvenile
23 court and may be adjudged a ward of the court.

24 (b) Any person who is alleged, when he or she was 14 years of
25 age or older, to have committed one of the following offenses shall
26 be prosecuted under the general law in a court of criminal
27 jurisdiction:

28 (1) Murder, as described in Section 187 of the Penal Code, if
29 one of the circumstances enumerated in subdivision (a) of Section
30 190.2 of the Penal Code is alleged by the prosecutor, and the
31 prosecutor alleges that the minor personally killed the victim.

32 (2) The following sex offenses, if the prosecutor alleges that
33 the minor personally committed the offense, and if the prosecutor
34 alleges one of the circumstances enumerated in the One Strike
35 law, subdivision (d) or (e) of Section 667.61 of the Penal Code,
36 applies:

37 (A) Rape, as described in paragraph (2) of subdivision (a) of
38 Section 261 of the Penal Code.

39 (B) Spousal rape, as described in paragraph (1) of subdivision
40 (a) of Section 262 of the Penal Code.

1 (C) Forcible sex offenses in concert with another, as described
2 in Section 264.1 of the Penal Code.

3 (D) Forcible lewd and lascivious acts on a child under 14 years
4 of age, as described in subdivision (b) of Section 288 of the Penal
5 Code.

6 (E) Forcible sexual penetration, as described in subdivision (a)
7 of Section 289 of the Penal Code.

8 (F) Sodomy or oral copulation in violation of Section 286 or
9 288a of the Penal Code, by force, violence, duress, menace, or fear
10 of immediate and unlawful bodily injury on the victim or another
11 person.

12 (G) Lewd and lascivious acts on a child under 14 years of age,
13 as defined in subdivision (a) of Section 288, unless the defendant
14 qualifies for probation under subdivision (d) of Section 1203.066
15 of the Penal Code.

16 (c) (1) Notwithstanding subdivision (a), the juvenile court may
17 dismiss a petition upon a finding that the juvenile who is alleged
18 to have violated Section 653.23 or subdivision (b) of Section 647
19 of the Penal Code did so due to coercion or duress.

20 (2) For purposes of this subdivision, the following definitions
21 apply:

22 (A) “Coercion” means a scheme, plan, or pattern intended to
23 cause a person to believe that failure to perform the act would
24 result in serious harm to, or physical restraint against, a person;
25 the abuse or threatened abuse of legal process; debt bondage; or
26 providing and facilitating the possession of a controlled substance
27 to a person with the intent to impair the person’s judgment.

28 (B) “Duress” means a direct or implied threat of force, violence,
29 danger, hardship, or retribution sufficient to cause a reasonable
30 person to acquiesce in or perform an act that he or she would
31 otherwise not have submitted to or performed; a direct or implied
32 threat to destroy, conceal, remove, confiscate, or possess an actual
33 or purported passport or immigration document of the victim; or
34 knowingly destroying, concealing, removing, confiscating, or
35 possessing an actual or purported passport or immigration
36 document of the victim.

37 (C) “Serious harm” means any harm, whether physical or
38 nonphysical, including, but not limited to, psychological, financial,
39 or reputational harm, that is sufficiently serious, under all
40 surrounding circumstances, to compel a reasonable person of the

1 same background and in the same circumstances to perform or to
2 continue to perform labor, services, or commercial sexual acts in
3 order to avoid incurring that harm.

4 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution because~~
6 ~~the only costs that may be incurred by a local agency or school~~
7 ~~district will be incurred because this act creates a new crime or~~
8 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
9 ~~for a crime or infraction, within the meaning of Section 17556 of~~
10 ~~the Government Code, or changes the definition of a crime within~~
11 ~~the meaning of Section 6 of Article XIII B of the California~~
12 ~~Constitution.~~